

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Patricia Ann Weiland**  
Petitioner-Appellant,

v.

**Des Moines County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 12-29-0482**  
**Parcel No. 11-32-303-009**

On July 11, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Kenneth J. Weiland, Jr. represented Petitioner-Appellant Patricia Ann Weiland. Senior Assistant County Attorney Amy K. Beavers represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Patricia Weiland is the owner of property located at 723 North Garfield Avenue, Burlington, Iowa. The real estate was classified residential on the January 1, 2012, assessment and valued at \$61,000, representing \$7,000 in land value and \$54,000 in improvement value. This was a change in value from the January 1, 2011, assessment.

Weiland protested the assessment to the Des Moines County Board of Review on the grounds that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); the property was assessed for more than authorized by law under section 441.37(1)(a)(2), asserting the correct value is \$57,500; that there was an error in the assessment under section 441.37(1)(a)(4); and that there was a downward change in value since the last

assessment under sections 441.37(1)(b) and 441.35(2). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006).

The Board of Review denied the protest.

Weiland then appealed to this Board reasserting her claims. She believes the property's fair market value is \$55,100. At hearing, Kenneth Weiland, who testified on Patricia's behalf, stated the error claim was actually a claim of inequity and over assessment. We, therefore, only consider these two claims.

According to the property record card, Weiland's property is a one-and-one-half-story, frame home built in 1890. It has 1520 square feet of above-grade living area with a full, unfinished basement. Additionally, it has a 384 square-foot, detached garage built in 2011; and two enclosed porches with a combined 302 square feet. The subject site is 0.124 acres.

In support of an over assessment claim, Weiland provided ten properties in the Burlington area: five properties were recent sales, and the other five were current listings. Weiland obtained this information from Zillow.com, a real estate web site. The following chart summarizes the properties.

Address	Listing Price	Sale Price	Sale Date
614 S 12th Street	\$39,900	N/A	N/A
241 S 9th Street	N/A	\$54,000	Oct-11
707 S 8th Street	N/A	\$31,500	Sep-11
1545 Lincoln Street	N/A	\$28,000	May-11
1408 Mt. Pleasant Street	N/A	\$50,000	Aug-12
1205 Franklin Street	\$59,900	N/A	N/A
1133 Doemland Street	\$59,900 <sup>1</sup>	N/A	N/A
538 S 10th Street	\$59,900	N/A	N/A
1039 Short Street	\$40,000	\$34,500	Oct-11
1224 S 10th Street	\$47,000	N/A	N/A

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<sup>1</sup> The Zillow.com report listed this property as a pending sale. Final sale price and sale date are unknown.

Of the five sales, at least one is not an arm's-length transaction. The property record card (PRC) for 1039 Short Street has an attachment showing Wells Fargo Bank as the seller. Because the property was bank-owned when it sold, the sale not considered a normal transaction for establishing market value. The four remaining sales occurred between May 2011 and August 2012, but Weiland provided no additional information about these transactions. Kenneth Wieland stated he had no knowledge about the listing/sales history of the properties, or whether they were normal, arms-length transactions. Additionally, he did not verify the Zillow.com data with public records to ensure accuracy. Lastly, none of these sales were adjusted to account for differences between them and the subject property. While sales and listings can be informative about a current market, in this case, there is insufficient evidence to rely on them because they cannot be verified as arm's-length transactions, and no adjustments were made to them to account for any differences as compared to the subject property. For these reasons, we give no consideration to the Zillow.com data.

Weiland also provided property record cards for five properties considered to be equity comparables. They are summarized below.

Address	Sale Price	Sales Date	2012 AV	Style	GLA	Yr Built
Subject Property	N/A	N/A	\$61,000	1.5 Sty	1520	1890
801 N Garfield	\$59,000	Jan-12	\$56,300	1 Sty	1216	1878
719 N Garfield	N/A	N/A	\$57,200	1.5 Sty	1308	1920
722 N Garfield	N/A	N/A	\$54,600	1 Sty	1040	1900
1224 S 10th Street	N/A	N/A	\$42,200	1 Sty	1181	1890
1039 Short Street	\$34,500	Oct-11	\$40,500	1.5 Sty	1632	1880

Only two of the properties are recent sales. To support an equity claim, the comparable properties must have a recent sales price or an established market value, or the taxpayer must allege different methods were used to assess like property. Without market information, we are unable to develop a sale ratio analysis. As previously noted, the sale of 1039 Short Street appears to have been the result of a foreclosure, and is therefore not a reliable sale. This leaves only one equity comparable

with a recent sale, 801 N Garfield. This property was assessed at \$56,300 and sold for \$59,000 in December 2012, almost a year after the assessment date.

Further, we note that while all of the properties Wieland submitted have lower assessments than the subject property, with the exception of Short Street, all have smaller gross living area. This may explain why they have lower assessments.

Finally, Weiland did not allege different methods were used to assess her property as compared to any of the properties she provided. For these reasons we give this evidence no consideration.

Weiland also included several articles pertaining to the value of trees, and their impact on the market value of the property. Weiland raised this issue because in 2006 or 2007 two shade trees were removed from the public egress of the subject property by the city of Burlington while it was making sewer, water, and street repairs. Wieland testified trees were removed along the entire street. Because the trees were removed six to seven years ago, we do not find this relevant to a 2012 opinion of value.

The Board of Review provided a letter from Assessor Matthew J. Warner (Exhibit P) detailing the 2012 assessed valuation of the subject property. Warner explains the Assessor's Office received notice of a building permit obtained on the subject property for the construction of a new garage in 2011. The building permit listed an estimated value of \$9000. During an on-site inspection, the Assessor's Office noted the old detached garage had been demolished, and a new 16-foot by 24-foot, average quality (grade 4) garage was erected. "This action created an increase of \$3500 for the 2012 assessed value." Further, we note Weiland provided a cost estimate for the garage (Exhibit 19) that indicates \$9052.20 for materials and some labor. Weiland testified some of the labor was provided by family members. Given the actual costs in excess of \$9000, we find the increase in the assessment of \$3500 to be reasonable.

The Board of Review also submitted five properties it considered comparable for equity analysis (Exhibits E-I) and created comparisons of the Weiland's five equity properties (Exhibits J –

N). The Board of Review does not believe Weiland's equity properties are sufficiently comparable to the subject property. Although the Board of Review provided five properties for an equity analysis, none are recent sales and no market value was established for any of the properties. Therefore, we give this evidence no consideration.

After reviewing all of the evidence, Weiland has failed to provide, by a preponderance of evidence, that the subject property is inequitably assessed or over-assessed as of January 1, 2012.

### ***Conclusion of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may

be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may challenge its assessment on the basis that there has been a downward trend in value. *Eagle Food Ctrs., Inc.*, 497 N.W.2d at 862. However, where the assessor has reassessed the property, all grounds for protest typically available in a reassessment year may be protested. *Id.* In this case, the assessor revalued Weiland's property in 2012.

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

*Id.* at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

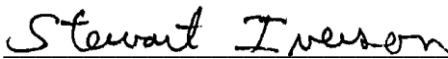
In this case, to prevail on an equity claim, Weiland would have had to compare prior year sales prices (in this case 2011) to the current year (2012) assessments. While Weiland provided five properties for comparison, the evidence did not include those properties' fair market values, which are


required to complete an equity analysis. Furthermore, Weiland did not assert different assessing methods were used to value her property.

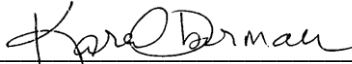
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Weiland failed to provide evidence of the fair market value of her property.

THE APPEAL BOARD ORDERS the assessment of Patricia A. Weiland property located at 723 North Garfield Street, Burlington, Iowa, of \$61,000 as of January 1, 2012, as set by the Des Moines County Board of Review is affirmed.

Dated this 5th day of August, 2013.


  
Stewart Iverson, Presiding Officer

  
Jacqueline Rypma, Board Member

  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>August 5, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	